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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RICKEY COFFER,

Defendant and Appellant.

F070180

(Super. Ct. No. BF144933A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Colette M. Humphrey, Judge.

C. Athena Roussos, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Gomes, J. and Peña, J.

## **INTRODUCTION**

Appellant Rickey Coffey was charged with five serious felonies and various enhancements in November 2012, but found incompetent to stand trial in February 2013. After being restored to competency, in July 2014 Coffey pled no contest to attempted murder, admitted prior conviction allegations, and a personal use of a weapon enhancement. All other charges and enhancements were dismissed. Coffey was sentenced to a total term of 25 years in prison and various fines and fees were imposed. Coffey appealed and a certificate of probable cause was issued. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We affirm.

## **FACTUAL AND PROCEDURAL SUMMARY**

On November 5, 2012, Coffey was charged with multiple serious felonies: Discharging a firearm at an occupied motor vehicle (Pen. Code,<sup>1</sup> § 246; count 1); attempted murder (§§ 187, subd. (a), 664; count 2); unlawful possession of a firearm (§ 29800, subd. (a)(1); count 3); unlawful carrying of a loaded firearm in public (§ 25850, subd. (c)(3); count 4); and active participation in a criminal street gang (§ 186.22, subd. (a); count 5). All counts were alleged to be serious felonies under section 1192.7. The complaint also alleged multiple enhancements, including personally inflicting great bodily injury, discharging a firearm causing great bodily injury, and the gang enhancement. In addition, it was alleged that Coffey had suffered a prior strike conviction.

On November 27, 2012, Coffey made a motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, which was heard *in camera*. The motion was denied.

On December 10, 2012, defense counsel made a motion pursuant to section 1369 to have Coffey evaluated by the Kern Regional Center. The trial court granted the motion and suspended criminal proceedings. The Kern Regional Center notified the trial court

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<sup>1</sup> References to code sections are to the Penal Code.

that Coffey was not eligible to receive services at their facility. The trial court referred Coffey to the Department of Mental Health (DMH) for evaluation.

On February 20, 2013, the trial court held a hearing to consider the report received from DMH. The parties stipulated that the report could be admitted into evidence. The report concluded that Coffey suffered from a mental disorder that significantly impacted his ability to understand the charges against him and to cooperate with his attorney. Coffey was diagnosed as suffering from major depression, antisocial personality disorder, and polysubstance dependence in remission. The report concluded Coffey was incompetent to stand trial “at this time.”

The trial court ordered Coffey placed at Patton State Hospital to be restored to competency. Coffey was admitted to Patton on March 22, 2013.

On September 11, 2013, the trial court considered a report received from Patton. The report from Patton indicated that Coffey’s “presentation and pattern of scores on testing indicated potential exaggerating of psychiatric symptoms.” Coffey’s treatment team concluded that he “currently has the ability to assist in his defense in a meaningful way.” The report opined that Coffey was competent to stand trial. The parties submitted the matter on the basis of the report. The trial court found Coffey competent to stand trial and reinstated criminal proceedings.

At the September 24, 2013, preliminary hearing, the trial court granted the People’s motion to dismiss counts 4 and 5 pursuant to section 1385. Coffey was held to answer to counts 1, 2, and 3. An information was filed on September 25, 2013, charging Coffey with three counts and various enhancements. Coffey pled not guilty and denied all enhancements.

On November 15, 2013, defense counsel again made a motion for an evaluation pursuant to sections 1367 and 1368. The trial court granted the motion and suspended proceedings.

At the December 17, 2013, hearing where the trial court received and considered the psychiatric evaluation of Coffey, the People submitted on the evaluation, but Coffey requested a trial on competency. The evaluation stated that a competency test had been administered to Coffey, where a score of 70 out of 100 was necessary to be found competent to stand trial. Coffey scored 92 on the test. The evaluation concluded that Coffey was rational, not delusional, understood the nature of the proceedings pending against him, and was able to cooperate and work with defense counsel. Coffey was considered competent to stand trial.

The time set for the competency trial was February 5, 2014. At that time, the People again submitted on the report. Defense counsel reported that in the interim, she had had another evaluation conducted of Coffey and that evaluation also concluded Coffey was competent to stand trial. Defense counsel submitted the matter based upon the evaluation. The trial court found Coffey competent to stand trial and set the matter for a jury trial.

On March 27, 2014, Coffey entered a plea of not guilty by reason of insanity. On July 25, 2014, Coffey signed a change of plea form and entered a no contest plea to the count 2 offense, attempted murder. He also admitted to having a strike prior that was a serious felony, and personal use of a weapon. In exchange, he would be sentenced to a fixed term of 25 years.

Before accepting the change of plea, the trial court asked if Coffey had gone over the change of plea form with his attorney, and if his attorney had explained the form to him. Coffey replied, "Yes, sir." The trial court asked if Coffey had initialed and signed the form; Coffey replied in the affirmative. The trial court asked if Coffey had "any questions you want to ask me or her before I take your plea," to which Coffey replied, "No." The parties stipulated to a factual basis for the plea. The trial court then proceeded to accept a waiver of constitutional rights and accept the change of plea. The remaining counts and allegations were dismissed.

At the sentencing hearing on August 26, 2014, the trial court sentenced Coffey to a term of ten years for the attempted murder count, an additional five years for the section 667, subdivision (a) enhancement, and an additional ten years for the section 12022.53, subdivision (b) enhancement, for a total fixed term of 25 years. The trial court awarded a total of 738 days of credit. Various fines and fees were imposed. In an unrelated misdemeanor case, for which Coffey was on probation, probation was terminated and any outstanding fines and fees in that case were waived.

The abstract of judgment accurately sets forth the sentence pronounced by the trial court.

Coffey filed a notice of appeal and sought a certificate of probable cause, which was granted. In a rambling statement in support of his certificate of probable cause, he contends the evidence does not support the charge and enhancements to which he pled, and he was never given a mental evaluation before he accepted the plea.

### **DISCUSSION**

Appellate counsel was appointed November 17, 2014. Appellate counsel filed a *Wende* brief on April 22, 2015. Coffey was invited to submit a supplemental brief, which he did on May 21, 2015. In that supplemental brief, Coffey contends counsel rendered ineffective assistance because she failed to obtain an expert to evaluate his competency to stand trial and also failed to assert that his prior conviction was not an offense that constituted a strike.

Coffey admitted to having suffered one prior strike conviction as part of his plea agreement. Both the People and Coffey benefit from a plea agreement. (*People v. Masloski* (2001) 25 Cal.4th 1212, 1216.) When a plea is entered for an agreed upon maximum punishment, as it was here, both parties must abide by the terms of the agreement. (*People v. Walker* (1991) 54 Cal.3d 1013, 1024.) Having admitted a prior strike as part of a plea agreement, Coffey is estopped from arguing his prior conviction is not a strike offense. (*People v. Ellis* (1987) 195 Cal.App.3d 334, 346-348.)

As for Coffey's claim of ineffective assistance of counsel for failing to obtain an independent evaluation of his competency to stand trial, the record shows otherwise. Defense counsel obtained an independent evaluation of Coffey's competency, which concluded he was competent to stand trial. In fact, Coffey was evaluated more than once before entering into the plea agreement; two evaluations found him competent. To the extent Coffey raises any other grounds for ineffective assistance of counsel, such claims should be raised by way of a writ proceeding. (*People v. Mendoza-Tello* (1997) 15 Cal.4th 264, 266-267.)

Lastly, as for Coffey's challenge to the factual basis for his plea, as set forth in his request for a certificate of probable cause, Coffey acknowledged in statements to police that he was in possession of a firearm and shot four rounds at an occupied vehicle. One of the shots hit a passenger, rupturing his liver. This evidence provides a factual basis for the plea.

After an independent review of the record, we find that no reasonably arguable factual or legal issue exists.

### **DISPOSITION**

The judgment is affirmed.